

1 89. As Gateway executives have recounted, Intel's threats beat them into
2 "guacamole." But Gateway is not alone. Prior to its merger with HP, Compaq
3 Computer received Intel threats every time it engaged with AMD. In late 2000, for
4 example, Compaq's CEO, Michael Capellas, disclosed that because of the volume of
5 business he had given to AMD, Intel withheld delivery of server chips that Compaq
6 desperately needed. Reporting that "he had a gun to his head," Capellas informed an
7 AMD executive that he had to stop buying AMD processors.

8 90. In 2002, Intel targeted NEC. Intel threatened to discontinue providing
9 NEC with the technological roadmap of future Intel products if NEC did not convert its
10 entire line of Value Star L computers to Intel microprocessors. Without that roadmap,
11 NEC would be at a distinct competitive disadvantage. Predictably, NEC succumbed
12 and eliminated AMD from the Value Star L series in 2002 and 2003.

13 91. AMD had been engaged in discussions with IBM about introducing an
14 Opteron "blade" server, when IBM suddenly announced that any such product it
15 distributed could not bear an IBM logo. When pressed for an explanation, IBM
16 reported that it could not appear overly supportive of AMD server products because it
17 feared retaliation from Intel.

18 **e. Interference with AMD Product Launches**

19 92. Key to gaining quick market acceptance of a new microprocessor is a
20 chipmaker's ability to develop a lineup of reputable launch partners, consisting of
21 OEMs prepared to roll out products featuring the chip, major customers who are
22 willing to buy and embrace it, and other industry allies, such as major software
23 vendors and infrastructure partners who can attest to its quality and reliability.
24 Particularly for commercial and enterprise (i.e., server-work station) purchasers, a
25 successful and impressive "launch" is essential to generating confidence among the
26 computer professionals who will be the potential audience for the new
27 microprocessor.

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1 93. Aware of the importance of product launches, Intel has done its utmost
2 to undermine AMD. Set forth below are several examples.

3 94. AMD's September 23, 2003, launch of Athlon64 was a watershed event
4 for the Company. Upon learning the launch schedule, Intel did its best to disrupt it.
5 For example, Acer committed to support the AMD rollout by making a senior
6 executive available for a videotaped endorsement and by timing the introduction of
7 two computers, a desktop and a notebook, to coincide with AMD events planned for
8 Cannes, San Francisco and Taiwan. Days before the event, Intel CEO, Craig Barrett,
9 visited Acer's Chairman, CEO and President in Taiwan, expressed to them Intel's
10 "concern" and said Acer would suffer "severe consequences" if it publicly supported
11 AMD's launch. The Barrett visit coincided with an unexplained delay by Intel
12 providing \$15-20 million in market development funds owed to Acer. As a result, Acer
13 withdrew from the launch in the U.S. and Taiwan, pulled promotional materials,
14 banned AMD's use of the video, and delayed the announcement of its Athlon64-
15 powered computers. Acer's President subsequently reported that the only thing
16 different about Intel's threats was the messenger -- they were "usually done by lower
17 ranking managers," not Intel's CEO.

18 95. HP also withdrew precipitously from the Athlon64 launch after
19 committing to participate. HP had agreed to support the launch by producing a
20 promotional video and by sending senior executives to all three launch sites. Just
21 before launch, however, HP manager, John Romano, pulled the video and
22 announced that HP would only be sending a junior manager, and then only to Europe.

23 96. Other AMD customers and channel partners reporting Intel coercion to
24 withdraw from the Athlon64 launch were Lenovo, NEC-CI, and Best Buy.

25 97. Intel also disrupted AMD's launch of its Opteron server chip, which was
26 rolled out on April 22, 2003, with few in attendance and little industry support. A
27 computer industry journal reported Intel's fingerprints: "They all (vendors) told me
28 that prior to the launch, they received a phone call from Intel. Intel asked if they were

1 going to the launch. If they replied yes, the Intel rep asked them if it was 'important to
2 them to go', or 'if they really wanted to go.' Pressing the vendors, I got the same
3 response, 'Intel is too smart to threaten us directly, but it was quite clear from that
4 phone call that we would be risking our various kickback money if we went'."

5 98. Other companies that reported being intimidated from participating in the
6 Opteron launch were MSI, Atipa, Solectron and Fujitsu-Siemens. Indeed, Intel
7 representatives told Fujitsu-Siemens' executives in the weeks preceding the Opteron
8 launch that if they attended, they would be the only Tier One OEM showing its
9 support as all of the others would back out. With the exception of IBM, Intel was right.

10 99. These are not isolated examples, but rather illustrations of Intel's
11 relentless campaign to undermine marketing efforts by its one remaining competitor.
12 For example, IBM pulled its AMD-powered computers from the 2004 Palisades
13 eServer and PC Show, citing a contractual agreement with Intel said to prohibit it from
14 endorsing those competitive products. And at the 2004 Super Computing Show, an
15 annual conference devoted to high performance computing, Intel offered two other
16 AMD customers money to remove AMD systems from their booths. At CeBit, Intel
17 threatened to pull a half million dollars of support from Fujitsu-Siemens for displaying
18 AMD products (which were removed).

19 **f. Product Bundling**

20 100. Intel also uses product bundling as an exclusionary weapon in a variety
21 of ways. Intel's most common deployment is in bidding for a new OEM platform; it
22 bundles microprocessors with free (or heavily discounted) chipsets or motherboards,
23 often offered in amounts exceeding the OEM's requirements for the new platform.
24 (The excess, of course, is only compatible with Intel processors, thereby providing the
25 OEM a strong inducement to go with Intel rather than AMD on uncommitted models.).
26 AMD does not sell chipsets or motherboards; they are provided by independent
27 suppliers such as ATI, nVidia and Via which incur their own costs and control their
28 own pricing. Hence, to match Intel's bundled microprocessor-chipsets-motherboards

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1 offer, AMD must extend a discount on its microprocessors that will not only match any
2 Intel discount on the microprocessors themselves but also will compensate the OEM
3 for the savings it will lose on independent Intel chipset and motherboard purchases.
4 The additional compensation AMD is forced to provide through a discount on the sale
5 of microprocessors alone makes AMD's sale of microprocessors potentially
6 unremunerative, and it also enables Intel to avoid competing with AMD directly on
7 microprocessor price and quality by imposing disproportionate burdens on AMD that
8 are wholly unrelated to AMD's product quality which, as has been demonstrated, is
9 frequently superior to that of Intel's.

10 101. As retaliation for dealing with AMD, Intel has also used chipset pricing as
11 a bludgeon. For example, in 2003, Acer had committed to launch the AMD Athlon
12 XP. Acer executives worldwide had been working with AMD to bring the product to
13 market post-launch. But, on the eve of the launch the Acer management in Taiwan
14 pulled the plug. AMD learned from Acer executives that Intel had threatened to raise
15 chipset prices by \$10 on all Intel-based Acer systems if any processor business was
16 awarded to AMD outside of Europe.

17 102. Intel's dealings with OEMs are unlawfully exclusionary, have no pro-
18 competitive justification, and are intended to maintain its monopoly.

19 **2) Practices Directed At Distributors**

20 103. Intel uses many of the same tactics it practices on OEMs to restrict
21 distributors from carrying AMD processors or selling AMD products into markets it
22 deems strategic. For example, it entered into an exclusive deal with Synnex, which is
23 one of the largest U.S. distributors. Given Intel's 80% plus market share, there is no
24 pro-competitive justification for this arrangement.

25 104. As with OEMs, Intel offers discounts and rebates to distributors on the
26 condition that they not do business with AMD.

27 105. Intel also offers a panoply of special programs for distributors who carry
28 Intel microprocessors exclusively: marketing bonuses, increased rebates, credit

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1 programs for new customers (credits that can be used for all products from Intel and
2 any other suppliers), payment for normal freight charges, and special inventory
3 assistance such as credits to offset inventory costs. When such nuanced means of
4 achieving exclusivity fail, Intel has simply bribed distributors not to do business with
5 AMD. For example, a high-ranking Tech Data executive turned down \$1 million to
6 stop doing business with AMD, causing the Intel representatives to ask, "How much
7 would it take?"

8 106. Intel also offers retroactive rebates triggered when a distributor reaches
9 a prescribed buying quota. Like the rebates offered to OEMs, the intent is to inflict
10 economic punishment on those who do too much business with AMD. Unlike OEM's
11 however, distributors remain ignorant of the goals Intel has set for them or the precise
12 consequences of failing to meet them. Intel does not share this information with
13 them; they simply receive a check at the end of a quarter. As a result, every AMD
14 chip they purchase, they buy at their peril.

15 107. Finally, those distributors who choose to do business with AMD have
16 been conditioned to expect Intel retaliation. For example, when ASI, one of the
17 largest computer hardware and software distributors, began distributing AMD
18 processors, Intel demanded that it exclude AMD personnel from its ASI Technology
19 Shows and its General Managers' meetings. Until recently, ASI refused master
20 distributor status from AMD, despite the financial benefits attached, because it feared
21 that such a public alignment with AMD would trigger Intel retaliation. When, in
22 January 2005, it finally accepted Master Distributor status, Intel began reducing the
23 level of market development funds ASI received.

24 108. Avnet Inc., one of the world's largest computer equipment distributors,
25 has also received its share of Intel intimidation. Thus, Avnet cited Intel as the reason
26 it could not distribute AMD parts to the industrial sector. And when AMD launched its
27 Opteron server chip, Intel made clear it would make it "painful" for Avnet were it to
28 begin distributing that chip. When Avnet did so anyway, Intel threatened to cut it off.

1 109. Intel's dealings with distributors are unlawfully exclusionary, have no pro-
2 competitive justification, and are intended to maintain its monopoly.

3 **3) Practices Directed At Retailers**

4 110. In both the U.S. and internationally, approximately one fifth of desktop
5 and notebook computers are purchased at retail stores. A handful of retailers
6 dominate the U.S. PC market: Best Buy and Circuit City are the largest. Other
7 significant but smaller retailers are WalMart/Sam's Club, Staples, Office Depot, and
8 Office Max.

9 111. Most of the PCs sold at retail are sold during four or five "buying
10 seasons" that correspond to events on the calendar ("Dads and Grads," "Back to
11 School," "Holiday," and the like), and retailers refresh their inventory for each of those
12 events. A chipmaker faces a two-step process to get its platform on retail shelves:
13 first, it must convince one or more OEMs to build machines using its microprocessor
14 at a suggested price point (called "getting on the roadmap"); and second, it must
15 convince the retailer to stock and devote shelf space to these machines. Shelf space
16 does not come for free.

17 112. The major retailers demand market development funds ("MDF") in
18 exchange. MDF can consist of cooperative advertising support, but more frequently it
19 comprises a marketing-related opportunity that a chipmaker must buy for tens of
20 thousands of dollars, for example, space in a Sunday circular, an in-store display or
21 an Internet training opportunity with the chain's sales staff. The MLF required to
22 secure shelf space can run as high as \$25 per box depending on the computer price
23 point and how urgently the competing chipmakers want the shelf space.

24 113. Intel has historically enjoyed an advantage over AMD at retail because,
25 using many of the strategies described above, it has had greater access to the OEMs'
26 roadmaps and the ability to exert pressure to keep AMD out of their product plans.
27 Also, it has significantly greater financial resources with which to buy retail shelf
28 space.

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1 114. But to leverage those advantages, Intel has also made exclusive deals
2 with many key retailers around the world. For example, until recently Office Depot
3 declined to stock AMD powered notebooks regardless of the amount of MDF AMD
4 offered, contending that to do so would put its "premier" status with Intel at risk. Fry's
5 is Fujitsu's only retailer in the United States. When Intel learned that Fry's was very
6 successfully marketing a Fujitsu's Athlon™ XP-based notebook, it offered Fry's a
7 large payment to remove it from its shelves.

8 115. AMD has nonetheless made some progress in gaining retail market
9 share. Because of price/performance advantages, which are key in retail, OEMs
10 build approximately 15% of their U.S. domestic market desktops with AMD
11 processors; within notebook roadmaps, AMD represents approximately 10%. On a
12 shelf space to sales basis, AMD has generally outperformed Intel. For instance, in
13 the desktop segment during the fourth quarter of 2004, AMD-equipped computers
14 captured between a 33%-38% share of Circuit City's sales, despite being limited to
15 five of the 25 models (20%) on the Circuit City shelves. And with approximately 15%
16 of the shelf space allotted to its products at Best Buy and CompUSA, AMD computers
17 accounted for roughly 30% and 22% of their sales, respectively. These numbers
18 confirm that AMD's products perform well at retail, provided that space is available.

19 116. In fact, Intel's sales staff was instructed "not to let this happen again."
20 As a result, Intel instituted a rebate program similar to what it foisted on OEMs, with
21 similar exclusionary effect. Under this program, Intel provides full MDF payments to
22 retailers, such as Best Buy and Circuit City, only if they agree to limit to 20% not just
23 the shelf space devoted to AMD-based products, but also the share of revenues they
24 generate from selling AMD platforms. If AMD's share exceeds 20%, the offending
25 retailer's marketing support from Intel is cut by 33% across all products.

26 117. This is how the program works at Circuit City. If less than 20% of Circuit
27 City's notebook revenue derives from AMD-based computers (30% for desktops),
28 Intel has agreed to pay Circuit City \$15 in MDF per Intel-powered machine; but if the

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1 AMD percentage reaches or exceeds 20%, Circuit City's MDF subsidy is cut to \$10.
 2 This creates a \$5 per box "tax" on the retailer for doing 20% or more of its dollar
 3 volume with AMD-powered machines; and this "tax" is applicable to all of the Intel-
 4 powered machines that the retailer buys, back to the very first machine.

5 118. The following illustrates the competitive disadvantage this creates for
 6 AMD: If Circuit City were to purchase only Intel-powered notebooks for its 200,000-
 7 unit inventory in a quarter, Intel would pay it \$15 of MDF per computer, or a total of \$3
 8 million. If Circuit City, however, were to reduce its purchase of Intel-based notebooks
 9 to 80% (160,000 units) so that it could stock a modest number of AMD-powered
 10 computers, Intel MDF would fall to \$1.6 million (\$10/MDF/unit times 160,000 units).
 11 Were AMD to match Intel's \$10 per unit MDF on the 40,000 units it supplied, Circuit
 12 City would receive an additional \$400,000, bringing its total MDF to \$2 million, leaving
 13 it \$1 million worse off or doing business with AMD. For AMD to make Circuit City
 14 "whole," it would have to vastly increase its MDF on its 20% share to \$35 MDF per
 15 unit ($40,000 \times \$35 = \$1.4M$), which together with Intel's \$1.6 million would bring the
 16 total MDF back to \$3 million. In other words, to just capture a 20% share, AMD must
 17 offer two or three times as much MDF as Intel – because it has far fewer units over
 18 which to spread the difference. Given those perverse economies, Circuit City is not
 19 likely to allocate less than 80% of its notebook sales to Intel, even if it means taking
 20 AMD stock off the shelves at the end of a quarter. (Indeed, to avoid inadvertently
 21 running afoul of the limitation, a prudent distributor would keep AMD's share well
 22 short of 20%.)

23 119. Intel's dealings with retailers are unlawfully exclusionary, have no pro-
 24 competitive justification, and are intended to maintain its monopoly at the expense of,
 25 *inter alia*, Plaintiff and the members of the Class.

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1 4) Intel's Standard Setting and Other Technical Abuses

2 a. Intel's Exclusion of AMD from Industry Standards

3 120. Companies within the computer industry often agree to design certain
4 aspects of their products in accordance with industry standards to ensure broad
5 compatibility. Indeed, standards are not only ubiquitous in the computer industry,
6 they are essential. When a company is unfairly excluded from the standards-setting
7 process or is denied timely access to the standard, however, competition can be
8 restrained in a way that reverberates throughout the entire market. Intel has
9 employed, and continues to employ, a variety of tactics that have the purpose and
10 effect of excluding and/or hampering AMD's full and active participation in the
11 development of important industry standards. Intel has also worked to deny AMD
12 timely access to such standards. Its efforts have hampered AMD's ability to
13 vigorously compete in the market.

14 121. By way of example, Intel and AMD each develop and manufacture
15 memory controller technologies that allow their processors and related components to
16 communicate with memory. Intel designs and manufactures an entirely separate chip
17 for this purpose, known as the Graphics and Memory Controller Hub, but AMD
18 embeds its memory controllers directly into its processors, thus dispensing with the
19 need for an extra chip and speeding up communication. Both companies need to
20 know and have access to memory standards well in advance of producing their
21 processors and/or chipsets so that their memory controller designs will be compatible
22 with the next generation of memory devices.

23 122. The Joint Electron Device Engineering Council ("JEDPC") is the industry
24 organization responsible for the standards governing the most recent generations of
25 computer memory chips. Even though JEDEC was already developing the standards
26 for the next generation of memory chips, Intel convened a secret committee that it
27 dubbed the Advanced DRAM Technology ("ADT") Consortium to develop a
28 competing memory standard.

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1 123. The ADT Consortium was cleverly structured with multiple tiers of
2 membership, each with different levels of access to information. The majority of
3 companies were consigned to the lowest tier, meaning that they would receive access
4 to the memory standard only upon its completion, but not during its development.
5 The actual development effort was undertaken by companies with the highest tier
6 membership status, which Intel reserved for itself and the major memory
7 manufacturers. No other companies were allowed input or full access to the standard
8 during its development by the ADT Consortium.

9 124. AMD desperately needed access to the developing standard, and input
10 into its definition, in order to be able to launch a microprocessor with updated memory
11 controller technology at the same time as Intel. AMD lobbied repeatedly for higher
12 tier membership status, but was continually turned down. Intel had structured the
13 ADT Consortium's rules to require a unanimous vote -- a rule that gave Intel veto
14 power -- over any decision to allow AMD to join the development committee; and it
15 used that veto power to cause the Consortium arbitrarily to reject AMD's application.

16 125. By foreclosing AMD from input or access to the memory standard during
17 its development process, Intel deliberately placed AMD at a severe competitive
18 disadvantage. As a consequence of exclusion, AMD had no opportunity to monitor
19 participants' suggestions and to object to Intel proposed features that were without
20 substantial benefit to consumers and were instead motivated by Intel's desire to
21 disadvantage AMD's microprocessor architecture. Furthermore, by keeping the ADT
22 Consortium memory standard-setting process shrouded in secrecy, Intel was able to
23 gain a significant head start. While the ADT Consortium was ultimately unsuccessful
24 in implementing an industry standard, this type of exclusionary conduct exemplifies
25 Intel's attempts to use industry standard-setting to competitively disadvantage AMD in
26 an unlawfully exclusionary manner.

27 126. Indeed, Intel is attempting a repeat performance with respect to a new
28 memory standard, this time excluding AMD by avoiding the open standard-setting

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1 committee entirely. Intel is currently coercing the major memory producers into
2 signing non-disclosure agreements and working exclusively with Intel in a "secret"
3 committee to develop the next generation memory interface standard. Once under
4 this agreement, the memory manufacturers are prohibited from sharing information
5 about their own product designs implementing the memory interface standard. This
6 has the effect of preventing AMD from completing the design of its processor memory
7 controllers until Intel permits memory manufacturers to communicate their interface
8 specifications to the industry.

9 127. By this scheme, Intel tightens its control over the industry by converting
10 what the component manufacturers intend as a public standard into a proprietary one,
11 and thereby guarantees itself an undeserved head-start and unfair competitive
12 advantage.

13 **b. Intel's Promotion of Industry Standards That**
14 **Disadvantage AMD.**

15 128. Even where it has been unable to exclude AMD from participating in the
16 development of industry standards, Intel has attempted to drive the adoption of
17 standards having no substantial consumer benefit and whose sole or dominant
18 purpose was to competitively disadvantage AMD based on its highly integrated
19 microprocessor architecture.

20 129. As an example, 2004, JEDEC began developing standards governing
21 the design of the memory modules for next generation ("DDR3") memory devices.
22 These modules, known as dual inline memory modules, or "DIMMS," consisted of
23 printed circuit boards upon which a number of memory chips were mounted. The
24 DIMMs connected the memory chips to the computer's motherboard through a series
25 of metal connectors known as "pins." One purpose of the JEDEC standards was to
26 define the functions of these pins so as to enable chipmakers to design compatible
27 memory controllers that would allow their microprocessors and the memory on the
28 DIMMs to communicate.

1 130. The JEDEC committee, which consists of members representing
2 companies throughout the computer industry, had already adopted a scheme for
3 defining the pins for the previous generation ("DDR2") DIMMs used in desktop and
4 laptop computers. When the JEDEC committee began work on standards for DDR3
5 memory modules for desktop computer, Intel proposed that the committee adopt a pin
6 definition similar to that used for the DDR2 memory modules. This proposal made
7 perfect sense, as Intel explained to the committee, because it allowed DDR3 memory
8 controllers to be compatible with DDR2 and DDR3 memory modules.

9 131. When the JEDEC committee began to define the pins for DDR3 laptop
10 memory modules in this consistent manner, however, Intel completely reversed its
11 position, counter-proposing instead that the committee rearrange the pin definitions.
12 Intel's proposal had no discernable technical merit or basis.

13 132. In fact, Intel's motivation for proposing modification of the laptop memory
14 module pin definition was to competitively disadvantage AMD. Any modification to
15 the laptop memory module pin definition would require Intel and AMD to make
16 corresponding modifications of their memory controllers. AMD's microprocessor
17 design, while representing a huge breakthrough in integration, embeds the memory
18 controller directly into its microprocessor. While this produces significant computing
19 advantages, modification of an embedded memory controller requires significantly
20 more time and expense.

21 133. Knowing this vulnerability, Intel proposed its modified DDR3 memory
22 module pin definition for laptop computers for the purpose of delaying AMD's
23 introduction of a technologically superior part. While Intel's proposal was ultimately
24 rejected by the JEDEC committee, confirming the proposal's complete lack of
25 technical merit, this is yet another example of how Intel has attempted to drive
26 industry standards to achieve its exclusionary ends.

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c. Intel's Leveraging of Its Other Product Lines to Unfairly Disadvantage AMD in the Marketplace

134. Intel has also designed and marketed microprocessor-related products with the goal of compromising performance for those who opt for AMD solutions, even if it requires sacrificing its own product quality and integrity.

135. An example is Intel's compilers. Generally, independent software vendors ("ISVs") write software programs in high-level languages, such as C, C++, or Fortran. Before these programs can be understood by a computer system, they must be translated into object code -- a machine-readable language -- by a software program called a compiler. Different companies write compilers for different operating systems (Windows, Linux, etc.) and for different programming languages (C, C++, Fortran, etc.). Intel offers compilers for use with a variety of different operating systems and programming languages.

136. Intel's compilers are designed to perform specialized types of optimizations that are particularly advantageous for ISVs developing software programs that rely heavily upon floating point or vectorized mathematical calculations. Such programs include, for example, mathematical modeling, multimedia, and video game applications.

137. Intel has designed its compiler purposely to degrade performance when a program is run on an AMD platform. To achieve this, Intel designed the compiler to compile code along several alternate code paths. Such paths are executed when the program runs on an Intel platform and others are executed when the program is operated on a computer with an AMD microprocessor. (The choice of code path is determined when the program is started, using a feature known as "CUID" which identifies the computer's microprocessor.) By design, the code paths were not created equally. If the program detects a "Genuine Intel" microprocessor, it executes a fully optimized code path and operates with the maximum efficiency. However, if

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1 the program detects an "Authentic AMD" microprocessor, it executes a different code
2 path that will degrade the programs performance or cause it to crash.

3 138. ISVs are forced to choose between Intel's compilers, which degrade the
4 performance of their software when operated with AMD microprocessors, or third-
5 party compilers, which do not contain Intel's particular optimizations. Sadly for AMD
6 and its customers, for legitimate reasons Intel's compilers appeal to certain groups of
7 ISVs, especially those developing software programs that rely heavily on floating
8 point and vectorized math calculations. Unbeknownst to them, performance of their
9 programs is degraded when run on an AMD microprocessor not because of design
10 deficiencies on the part of AMD, but deviousness on the part of Intel.

11 EFFECTS OF INTEL'S MISCONDUCT

12 139. Intel's unlawful conduct has caused and continues to cause substantial
13 harm to competition in the market for x86 microprocessor chips. But for Intel's acts,
14 AMD and other competitors would be able to compete for microprocessor business
15 on competitive merits giving customers and end-product consumers lower prices,
16 enhanced innovation and greater freedom of choice. As a result of Intel's conduct as
17 alleged herein, however, Plaintiff and the members of the Plaintiff Class have been
18 injured in their business or property and have been forced to pay supra-competitive
19 prices for x86 microprocessor chips and end-products and, suffered reduced
20 innovation and restricted choices in the x86 microprocessor market.

21 TOLLING OF APPLICABLE STATUTES OF LIMITATION

22 140. Any applicable statutes of limitation have been equitably tolled by
23 Defendant's affirmative acts of fraudulent concealment, suppression, and denial of
24 the true facts regarding the existence of the monopolistic and anti-competitive
25 practices at issue herein. Thus, all applicable statutes of limitations should be tolled.

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VIOLATIONS ALLEGED
 FIRST CLAIM FOR RELIEF
 Violations of the Cartwright Act,
 California Business & Professions Code §16720, et seq.
 (Against All Defendants)

141. Plaintiff incorporates by reference and realleges paragraphs 1 through 140 above, as fully set forth herein.

142. Beginning at a time presently unknown to plaintiff, and continuing thereafter to the present, defendant and others, including those presently unknown, entered into and engaged in a continuing unlawful trust in restraint of trade and commerce described above in violation of California Business and Professions Code section 16720.

143. The aforesaid violations of California Business and Professions Code section 16720 consisted, without limitation, of a continuing combination, trust, agreement, understanding, and concert of action among the Defendant, and others, which restrained trade and commerce in the sale or distribution of Intel x86 microprocessor chips, in California and the United States.

144. For the purpose of forming and effectuating the aforesaid unlawful trust, the Defendant and others have done those things to which they agreed, combined, and conspired as described above.

145. The aforesaid unlawful trust has had the following effects, among others, including the effects described above:

a. Competition in the sale of x86 microprocessor chips and end-products containing such chips has been suppressed, restrained, or eliminated;

b. Prices of x86 microprocessor chips indirectly purchased by plaintiff and other members of the Plaintiff Class including end-products have been raised, fixed, maintained, and stabilized at artificial and non-competitive levels.

146. During the period covered by this Complaint, plaintiff and the other members of the Plaintiff Class purchased x86 microprocessor chips indirectly from Intel for their own use and not for re-sale. By reason of the alleged violations of the

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1 antitrust laws, plaintiff and other members of the Plaintiff Class paid more for x86
 2 microprocessor chips than they would have paid in the absence of the illegal trust,
 3 have had their choices limited and, as a result, have been injured in their business
 4 and property and have suffered damages in an amount according to proof at trial.

5 **SECOND CLAIM FOR RELIEF**
 6 **Common Law Monopolization and Attempted Monopolization**
 7 **(Against All Defendants)**

8 147. Plaintiff incorporates by reference and realleges paragraphs 1-146
 9 above, as though fully set forth herein.

10 148. Defendant has engaged in acts and practices as described above
 11 without justification that operate to exclude competition in the x86 microprocessor
 12 chip markets and to acquire, maintain, and increase their monopoly power and
 13 attempt to acquire, maintain, and increase such monopoly power in California and the
 14 United States. Both the purpose and the effect of these acts and practices have been
 15 to restrain competition in the relevant markets for x86 microprocessor chips, thereby
 16 enabling Intel to maintain a monopoly over that market, creating a dangerous
 17 probability of successful monopolization of that market and to charge supra-
 18 competitive prices.

19 149. By engaging in such acts of exclusion, defendant have engaged in
 20 unlawful monopolization and attempted monopolization.

21 150. These exclusionary acts and practices lack legitimate business
 22 justification are not reasonably necessary to further any legitimate pro-competitive
 23 purpose, and impair competition in an unnecessarily restrictive way.

24 151. The defendant's exclusionary and restrictive practices described herein
 25 have caused significant harm to class members by increasing the prices they have
 26 paid for Intel x86 chips above competitive levels and by denying them a free choice in
 27 a competitive market. As a result of the exclusionary and restrictive practices it has
 28 imposed on others, including those described herein, defendant has raised and
 reinforced barriers to market entry so as to forestall the development of actual

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1 competition in the relevant market. The resultant monopoly power has enabled Intel
2 to price their x86 chips in a monopolistic fashion. OEMs and others have passed
3 these monopoly prices on to consumers, including particularly to plaintiff and the
4 class members.

5 152. As a direct and proximate result of defendant's acts of monopolization
6 and attempted monopolization as alleged herein, plaintiff and the members of the
7 Plaintiff Class have suffered actual damages in an amount to be proven at trial.

8 153. Defendant's acts of monopolization as described herein were intended to
9 monopolize and suppress competition in the relevant markets and to injure
10 consumers. Defendant's acts of monopolization were and included acts of fraud,
11 malice and oppression and were done with conscious disregard of the rights upon
12 consumers, including plaintiff and the Plaintiff Class. Accordingly, an award of
13 punitive damages is justified in order to make an example of Defendant, to punish
14 Defendant, and to deter Defendant, and others, from engaging in the same or similar
15 conduct. Plaintiff, and the members of the Plaintiff Class, seeks an award of punitive
16 damages in an amount according to proof at trial.

17 **THIRD CLAIM FOR RELIEF**
18 **Violations of the Cartwright Act,**
California Business & Professions Code §16727
19 **(Against All Defendants)**

20 154. Plaintiff incorporates by reference and realleges paragraphs 1-153
21 above, as though fully set forth herein.

22 155. Defendant has engaged in sales, contracts, agreements or
23 understandings for the sale of x86 microprocessor chips for use within the California
24 and the United States, or fixed prices charged therefore, or discounts from, or rebates
25 upon, such prices, on the condition, agreement or understanding that the purchasers
26 not use or deal in the x86 microprocessor chips of a competitor or competitors.

27 156. The effect of such exclusive dealing sales or contracts, agreements or
28 understandings may be to substantially lessen competition or tend to create a

1 monopoly in x86 microprocessor chips within the State of California and the United
2 States.

3 157. As a result of the exclusionary and restrictive practices described herein,
4 Intel has imposed on others, raised and reinforced barriers to market entry so as to
5 forestall the development of actual competition in the relevant market. The resultant
6 monopoly power has enabled Intel to price their x86 microprocessor chips in a
7 monopolistic fashion. OEMs and others have passed these monopoly prices on to
8 consumers, including particularly to plaintiff and the class members.

9 158. As a direct and proximate result of defendant's acts of exclusionary and
10 restrictive practices as alleged herein, plaintiff and the members of the Plaintiff Class
11 have suffered injury in their business or property as plaintiff and other members of the
12 Plaintiff Class paid more for x86 microprocessor chips than they would have paid in
13 the absence of the such conduct and have had their choices artificially limited.
14 Plaintiff and the members of the Plaintiff Class have thereby suffered damages in an
15 amount according to proof at trial.

16 REQUEST FOR RELIEF

17 WHEREFORE, plaintiffs pray:

18 1. This Court certify the Plaintiff Class;

19 2. This Court declare that defendants have engaged in combinations of
20 capital, skill and acts with others constituting a trust for the purpose of creating or
21 carrying out restrictions in trade or commerce, limiting and reducing the production
22 and increasing the price of merchandise or a commodity, and preventing competition
23 in manufacturing, making, transportation, sale or purchase of merchandise, products,
24 or a commodity, in violation of the Cartwright Act (California Business and
25 Professions Code section 16720 et seq.), in violation of the of the common law of
26 monopolization, and exclusive dealing that may substantially lessen competition or
27 tend to create a monopoly in x86 microprocessor chips within the State of California
28 and the United States for (California Business and Professions Code section 16727);

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- 1 3. On the First Cause of Action (Cartwright Act – Illegal Trust): Plaintiffs
- 2 and the members of the Class recover their actual damages, in an amount to be
- 3 determined at trial, and said amount be trebled pursuant to California Business and
- 4 Professions Code section 16750;
- 5 4. On the Second Cause of Action (Monopolization): Plaintiffs and the members
- 6 of the Class recover their actual damages, in an amount to be determined at trial, and
- 7 punitive damages in an amount to be determined at trial;
- 8 5. On the Third Cause of Action (Cartwright Act – Exclusive Dealing):
- 9 Plaintiffs and the members of the Class recover their actual damages, in an amount
- 10 to be determined at trial, and said amount be trebled pursuant to California Business
- 11 and Professions Code section 16750;
- 12 6. That defendants be enjoined from further acts in violation of the
- 13 aforesaid;
- 14 7. That plaintiffs and the members of the Class recover their reasonable
- 15 attorneys' fees and costs of suit;
- 16 8. That plaintiffs and the members of the Class recover pre-judgment and
- 17 post-judgment interest on the above sums at the highest rate allowed by law; and
- 18 9. That plaintiff and the members of the Class be granted such other and
- 19 further relief as this Court deems to be just and equitable.
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JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

DATED: July 27, 2005

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